



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0327; FRL-8869-01-OAR]

California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition Engines Fleets Regulation; Request for Authorization; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its large spark-ignition engines fleets regulation (LSI amendments). By letter dated March 15, 2021, CARB asked that EPA issue a full authorization for the accompanying enforcement provisions contained in their LSI amendments adopted in 2016. This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request for the LSI amendments, and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on September 9, 2021, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by September 1, 2021, to express interest in presenting the agency with oral testimony at a virtual public hearing. Parties that wish to present oral testimony at a virtual public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, an announcement of the virtual public hearing along with instructions to testify or attend the hearing will be posted at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until October 12, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2021-0327, by one of the following methods:

- Online at <http://www.regulations.gov>: Follow the Online Instructions for Submitting Comments.
- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-9744.
- Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2021-0327, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions received must include the Docket ID No. for this action.

Comments received may be posted without change to [https:// www.regulations.gov](https://www.regulations.gov), including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via [https:// www.regulations.gov](https://www.regulations.gov) or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at [https:// www.epa.gov/dockets](https://www.epa.gov/dockets). EPA continues to

monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

EPA’s Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization *Federal Register* notices. The page can be accessed at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Attorney-Advisor, Transportation Climate Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405A), NW, Washington, DC 20460. Telephone: (202) 343-9256. Fax: (202)343-2804. Email: Dickinson.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. California’s LSI Regulations

CARB promulgated its first LSI regulations, applicable to new LSI engines, in 1999 and they remained unchanged until the 2008 amendments.¹ EPA authorized the LSI regulations, on May 15, 2006.² CARB adopted its initial off-road LSI fleet operator regulations on May 25, 2006 (Fleet Operator Regulations).³ The Fleet Operator Regulations are designed to address the hydrocarbon (HC) and nitrogen oxide (NOx) emissions from existing LSI engines operating in California and require fleets to meet certain fleet average emission level (FAEL) standards.

CARB adopted its 2008 LSI amendments on November 21, 2008. The 2008 LSI amendments created two new engine categories below one-liter displacement, with new

¹ Title 13, California Code of Regulations, sections 2430-2439.

² 71 FR 29623 (May 15, 2006).

³ EPA granted an authorization for these regulations at 77 FR 20388 (April 4, 2012).

more stringent exhaust and evaporative emission standards applicable to new engines. These amendments also provided clarification as to when CARB's off-road sport or utility regulations apply to certain LSI engines. CARB adopted its 2010 LSI amendments on December 17, 2010. These amendments were designed to provide compliance flexibility which will allow operators to reduce their compliance costs while retaining the emission benefits associated with the original regulations.⁴

At its July 21, 2016 public hearing, the Board approved for adoption the 2016 LSI Fleet Amendments.⁵ CARB's Executive Officer formally adopted the 2016 LSI Fleet Amendments on May 5 2017, and became operative under state law by the approval of California's Office of Administrative Law on June 20, 2017.⁶ By letter dated March 15, 2021, CARB submitted a request to EPA for an authorization to enforce the 2016 LSI Fleet Amendments and CARB asks that EPA consider its amendments as accompanying enforcement procedures for standards that have already been authorized by EPA in a prior decision as noted above.⁷ The 2016 LSI Fleet Amendments include reporting requirements (e.g., initial and annual reports, equipment transfer and sales reports, and an extension of existing reporting requirements for fleet operators subject to fleet average emission limits). The 2016 LSI Fleet Amendments also include new labeling requirements wherein, based on operator provided information, CARB will issue the operators a unique EIN for each item of equipment reported and become the basis of a manufacturer's equipment labels with a number of associated requirements.

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of

⁴ EPA granted a full authorization for the 2008 amendments and a within-the-scope confirmation for the 2010 amendments at 80 FR. 76468 (Dec. 9, 2015).

⁵ See CARB Resolution 06-10 at EPA-HQ-OAR-2021-0327.

⁶ See Executive Order R-17-002 at EPA-HQ-OAR-2021-0327.

⁷ See EPA-HQ-OAR-2021-0327.

emissions from certain new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles.⁸ Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines not preempted by section 209(e)(1) if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209]. In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards.

On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.⁹ EPA revised these regulations in 1997.¹⁰ As stated in the

⁸ See 40 CFR §1074.10.

⁹ 59 FR 36969 (July 20, 1994).

¹⁰ 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

- (a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.
- (b) The authorization will not be granted if the Administrator finds that any of the following are true:
 - (1) California's determination is arbitrary and capricious.
 - (2) California does not need such standards to meet compelling and extraordinary conditions.
 - (3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.
- (c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller

preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).¹¹

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.¹²

When considering whether to grant authorizations for accompanying enforcement procedures tied to standards (such as record keeping and labeling requirements) for which an authorization has already been granted, EPA has evaluated (1) whether the

than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

¹¹ 59 FR 36969 (July 20, 1994).

¹² *Id.* See also 78 FR 58090, 58092 (September 20, 2013).

enforcement procedures are so lax that they threaten the validity of California's determination that its standards are as protective of public health and welfare as applicable federal standards, and (2) whether the federal and California enforcement procedures are consistent.¹³

III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to EPA's consideration of the accompanying enforcement procedures established within the 2016 LSI Fleet Amendments. Specifically, we request comment on whether California's 2016 LSI Fleet Amendments: (a) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (b) affect the consistency of California's requirements with section 209 of the Act; or (c) raise any other new issues affecting EPA's previous waiver or authorization determinations.

IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until October 12, 2021. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2021-0327.

¹³ See *Motor and Equipment Manufacturers Association v Environmental Protection Agency*, 627 F.2d 1095 (D.C. Cir. 1979).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as “Confidential Business Information” (“CBI”). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 11, 2021.

Karl Simon,
Director,
Transportation and Climate Division,
Office of Transportation and Air Quality,
Office of Air and Radiation.

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